



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 12-375, 23-62; FCC 23-19; FR ID 133862]

Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Delegations of authority ; reaffirmation and modification.

SUMMARY: In this document, the Federal Communications Commission (Commission) reaffirms its prior delegation of authority to the Wireline Competition Bureau (WCB) and Office of Economics and Analytics (OEA) to modify the Commission's most recent mandatory data collection as appropriate to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022. The Commission also reaffirms and updates its prior delegation of authority to WCB and the Consumer and Governmental Affairs Bureau (CGB) to modify the instructions and reporting template for the annual reports required from service providers as appropriate to supplement the information that will be received in this data collection.

DATES: The delegations of authority to WCB, OEA, and CGB are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office of the Consumer and Governmental Affairs Bureau, at (202) 418-1264 or via email at michael.scott@fcc.gov, regarding portions of this document relating to communications services for incarcerated people with hearing or speech disabilities, and Stephen Meil, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418-7233 or via email at stephen.meil@fcc.gov, regarding other matters.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, document FCC 23-19, released March 17, 2023, in WC Docket Nos. 12-375 and 23-62. The full

text of document FCC 23-19 can be accessed electronically via the FCC's Electronic Document Management System (EDOCS) website at www.fcc.gov/edocs or via the FCC's Electronic Comment Filing System (ECFS) website at www.fcc.gov/ecfs. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov, or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY).

SYNOPSIS:

1. In this Order, the Commission builds on its efforts to date, bolstered by the new authority Congress has bestowed, and begins the process of implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act) to adopt just and reasonable rates and charges for incarcerated people's audio and video communications services. Martha Wright-Reed Act, Public Law No. 117-338, 136 Stat. 6156. This Order continues and expands on the Commission's ongoing efforts to reform providers' rates, charges, and practices in connection with interstate and international inmate calling services in WC Docket No. 12-375. At the same time, document FCC 23-19 initiates a new docket, WC Docket No. 23-62, to specifically address implementation of, and changes required by, the provisions of the Martha Wright-Reed Act.

2. In the Order, the Commission reaffirms its prior delegation of data collection authority to WCB and OEA and directs them to update and restructure their most recent data collection as appropriate in light of the requirements of the new statute, so that the Commission may meet its statutory obligation to ensure that the rates and charges for communications services between incarcerated people and their friends and families are just and reasonable. The Commission also reaffirms and updates its prior delegation of authority to WCB and CGB to modify the instructions and reporting template for the annual reports required from service providers as appropriate to supplement the information that will be received in this data collection.

Background

3. *Data Collection.* On January 5, 2023, President Biden signed into law the Martha Wright-Reed Act. The Act was the product of efforts by multiple individuals and committed stakeholders over a number of years to comprehensively address the persistent problem of unreasonably high rates and charges incarcerated people and their families pay for communications services. At its core, the Act removes the statutory limitations that previously prevented the Commission from setting comprehensive and effective just and reasonable rates for incarcerated people's communications services.

4. Specifically, the Martha Wright-Reed Act modifies section 276 of the Communications Act of 1934 (Communications Act) to explicitly enable the Commission to require that rates for incarcerated people's communications services be just and reasonable, irrespective of the "calling device" used. The Act expressly allows the Commission to "use industry-wide average costs," as well as the "average costs of service of a communications service provider" in setting just and reasonable rates. The Martha Wright-Reed Act also requires that the Commission "shall consider," as part of its ratemaking, "costs associated with any safety and security measures necessary to provide" telephone service and advanced communications services. The statute further directs the Commission to promulgate regulations necessary to implement the statutory provisions not earlier than 18 months and not later than 24 months after the date of its enactment.

5. In 2013, the Commission adopted interim interstate rate caps and adopted the Commission's first mandatory data collection regarding inmate calling services (ICS), requiring all providers of those services to submit data on their underlying costs of service. Rates for Interstate Inmate Calling Services, 78 FR 67956, November 13, 2013. It also adopted an annual reporting obligation requiring providers to provide specific information on their operations, including their rates and ancillary service charges.

6. In 2015 , in light of record evidence of continued “egregiously high” rates, the Commission adopted a comprehensive framework for regulating rates and charges for both interstate and intrastate calling services for incarcerated people, re-adopting the interim interstate rate caps it adopted in 2013, and extending them to intrastate calls pending the effectiveness of the new rate caps. The Commission also adopted a Second Mandatory Data Collection to enable it to identify trends in the market and adopt further reforms. Rates for Interstate Inmate Calling Services, 80 FR 79135, December 18, 2015.

7. Subsequently, after seeking comment on additional steps to address unreasonable rates, the Commission released a comprehensive order in which, among other actions, it reformed the treatment of site commissions, set new interim interstate rate caps for prisons and jails with average daily populations of 1,000 or more incarcerated people, and capped international calling rates for the first time. Rates for Interstate Inmate Calling Services, 86 FR 40682, July 28, 2021 (*2021 ICS Order*).

8. In the *2021 ICS Order*, the Commission also sought to improve the data it collected on calling services for incarcerated people as part of its efforts to set reasonable permanent rate caps. It delegated authority to WCB and OEA to establish a Third Mandatory Data Collection to collect uniform cost data to use in setting rate caps that more closely reflect inmate service providers’ costs of providing service at correctional facilities. After seeking public comment, in January 2022, WCB and OEA released an Order adopting the data collection. Parties’ responses to the Third Mandatory Data Collection were due June 30, 2022, and the Commission affirmatively incorporates those responses into the record in this proceeding.

Order

9. The Martha Wright-Reed Act directs the Commission to promulgate regulations necessary to implement its provisions not earlier than 18 months and not later than 24 months after the date of its enactment, and includes specific language addressing the use of data in

promulgating implementing regulations. The statutory language provides both guidance and directives regarding the use of data, including allowing the Commission to “use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider” in determining just and reasonable rates while ensuring providers are fairly compensated. It further states that the Commission “shall consider costs associated with safety and security measures necessary to provide a service” and “differences in costs” by “small, medium and large facilities or other characteristics.” These provisions contemplate and require the collection and analysis of advanced communications services’ costs and related data, especially for video communications, among other data that, prior to the Act, the Commission either had no jurisdiction to collect or reason for doing so. The data analysis to implement the statute’s mandate that rates and charges be “just and reasonable” must be completed within the required 18 to 24 month timeframe.

10. The Commission’s most recent data collection, limited only to inmate telephone services data, took nearly 14 months from the date the Commission delegated authority to WCB and OEA to conduct the data collection on May 24, 2021, to obtaining OMB approval of the data collection instructions and templates, issuing the order directing providers to file their responses and waiting for responses to be filed on June 30, 2022 (a total 402 days for Commission staff to receive responses from the date of delegation of authority). In addition to these steps, WCB and OEA will need time to compile the data into a consistent and meaningful format, analyze the data, and make recommendations for Commission consideration to result in the Act’s implementing rules.

11. To ensure that the Commission has the data it needs, in time to meet this statutory mandate, and given the procedurally complex and time-consuming process for data collections generally, the Commission reaffirms its prior delegation of authority to WCB and OEA and directs them to update the prior data collection to encompass, and collect, data on all incarcerated people’s communications services from all providers of those services now subject to its

expanded authority under the Martha Wright-Reed Act and the Communications Act of 1934, as amended. Specifically, the Commission delegates authority to WCB and OEA to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act. The Commission has conducted three data collections related to incarcerated people's calling services in the past ten years. To allow for consistent data reporting, the Commission directed the Commission staff to develop a template for providers to use when submitting their data and to furnish providers with instructions to implement the collection. The Commission also directed staff to review the providers' submissions and delegated to the staff the authority to require providers to submit additional data as necessary to perform its review.

12. The Commission concludes that it must immediately begin the process of updating and restructuring the most recent data collection if it is to meet both its procedural obligations (to consider certain types of data) and its substantive responsibilities (to set just and reasonable rates and charges) under the Martha Wright-Reed Act and the Communications Act. It therefore delegates to WCB and OEA authority to implement any appropriate modifications to this data collection, including with respect to information concerning intrastate services and "any audio or video communications service used by inmates for the purpose of communicating with individuals outside of the correctional institution where the inmate is held, regardless of technology used." The Commission directs WCB and OEA to modify the template and instructions for the collection to the extent appropriate to timely collect such information to cover the additional services and providers now subject to its authority. It also delegates to WCB and OEA the authority to require providers now covered by section 276 of the Communications Act to submit any additional information that they find will assist the Commission in implementing the Martha Wright-Reed Act, including, but not limited to, the authority to request more recent data for additional years not covered by the most recent data collection. Finally, the Commission delegates to WCB and OEA the authority to conduct the requisite Paperwork Reduction Act analysis for any new or modified data collection(s) that they

implement pursuant to this Order. Any new or modified requirements that require approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act shall be effective on the date specified in a notice published in the Federal Register announcing OMB's approval.

13. *Annual Reports.* The Commission also reaffirms and updates its prior delegation of authority to WCB and the CGB to revise the instructions and reporting template for the Annual Reports that all service providers are required to file each year. Specifically, it delegates authority to WCB and CGB to modify, supplement, and update those instructions and that template as appropriate to supplement the information the Commission will be receiving in response to the Mandatory Data Collection described above. The Commission finds that this additional information is needed to enable it to understand the rates and ancillary service fees incarcerated people's communications service providers charge for or in connection with the audio and video services now subject to its authority. However, the Commission notes that incarcerated people's communications services providers that do not provide any services classified as inmate calling services under its current rules will not be subject to this reporting requirement. Finally, the Commission delegates to WCB and CGB the authority to conduct the requisite Paperwork Reduction Act analysis for any changes to the Annual Report requirements that are implemented pursuant to this Order.

14. *Effective Date of Delegations of Authority.* The Commission's delegations of authority to WCB, OEA, and CGB will take effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Making the delegations effective at that time will enable WCB, OEA, and CGB to move as expeditiously as practicable toward modifying, supplementing, and updating the Third Mandatory Data Collection to include additional information to facilitate the Commission's ability to fully implement the Martha Wright-Reed Act. Indeed, the Martha Wright-Reed Act directs the Commission to "promulgate any regulations necessary" to establish just and reasonable rates "not later than 24 months" after

enactment. Any unnecessary delay in its efforts to collect appropriate information would be inconsistent with, and undermine its ability to meet the deadlines contained in, the Act.

Furthermore, given the importance of these areas to incarcerated people, including those with communication disabilities, any unnecessary delay in these initiatives would be inconsistent with the public interest.

15. For purposes of administrative efficiency and to further assist the Commission in its efforts to implement the Martha Wright-Reed Act, the Commission intends to consider the extensive record developed in WC Docket No. 12-375, Rates for Interstate Inmate Calling Services, and hereby incorporates the record of that proceeding into WC Docket No. 23-62.

Procedural Matters

16. *Congressional Review Act.* The Commission has determined that this Order does not adopt any rules as defined under 5 U.S.C. 551, 804. Accordingly, the Commission is not required to submit, and will not be submitting, a copy of document FCC 23-19 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

17. *Regulatory Flexibility Act.* The Commission has determined that this Order does not adopt any rules as defined under 5 U.S.C. 551. Accordingly, the Commission is not required to issue, and will not be issuing, a final regulatory flexibility analysis concerning the impact of this Order. *See* 5 U.S.C. 604.

18. *Paperwork Reduction Act.* The Commission has determined that this Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

Ordering Clauses

19. Pursuant to the authority contained in sections 1, 2, 4(i)-(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law No. 117-338, 136 Stat 6156 (2022), the Order in document FCC 23-19 *is adopted*.

20. Pursuant to the authority contained in sections 1, 2, 4(i)-(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law No. 117-338, 136 Stat 6156 (2022), and sections 0.201 and 1.103(a) of the Commission's rules, 47 CFR 0.201, 1.103(a), the Order in document FCC 23-19 *shall be effective* on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023-06508 Filed: 3/29/2023 8:45 am; Publication Date: 3/30/2023]